

Kansas Department of Health and Environment  
**Regulatory Impact Statement**  
pursuant to K.S.A. 77-416

**Proposed New Regulation**  
K.A.R. 28-31-260b

**Proposed Amended Regulation**  
K.A.R. 28-31-268

January 2013

## **Executive Summary of Proposed Amended Regulations**

In October of 1985, the Kansas Department of Health and Environment (KDHE) obtained authorization from the U.S. Environmental Protection Agency (EPA) to administer the hazardous waste management program in lieu of EPA. Currently, KDHE is only authorized for the Federal program in effect as of July 1, 1992. In 2011, KDHE updated its regulations to adopt Federal hazardous waste regulations as in effect July 1, 2006.

KDHE is seeking authorization for the updated program which will, for the first time, include authorization for corrective action. When KDHE receives this authorization, hazardous waste facilities in Kansas that are undertaking corrective action measures will be under the regulatory oversight of KDHE rather than EPA. However in order for the current hazardous waste program to be authorized, Kansas must adopt by reference certain technical documents that are mentioned in the regulations. KDHE proposes to adopt these documents by reference in new regulation KAR 28-31-260b.

In addition, KDHE has discovered a mistake in KAR 28-31-268 (Land Disposal Restrictions) which potentially imposes analytical testing and paperwork requirements that KDHE did not intend on generators of 25 to 100 kilograms of hazardous waste per month. KDHE proposes to fix this error by amending KAR 28-31-268. Other non-substantive changes will also be made to this regulation.

## **Environmental Benefit Statement**

### **1) Need for proposed amendments and environmental benefit likely to accrue.**

#### **a. Need.**

#### **KAR 28-31-260b. General provisions and definitions: adoption of technical documents.**

Adoption of these technical documents is needed to maintain and update Kansas' authorization to administer the hazardous waste management program in lieu of EPA. These documents are adopted by reference in the federal regulations at 40 CFR 260.11, which Kansas has not adopted. Some of the technical documents listed in 40 CFR 260.11 are not adopted by reference in KAR 28-260b, either because the federal regulations the documents are referenced in were not adopted by Kansas or because they are referenced in provisions that are not delegable to State programs.

#### **KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.**

This proposed amendment serves to correct an error in KAR 28-31-268, which adopts 40 CFR Part 268, Land Disposal Restrictions, by reference. 40 CFR Part 268 sets standards for treatment of hazardous waste that is destined for disposal in a municipal solid waste landfill or a hazardous waste landfill.

Under Federal regulations, Land Disposal Restrictions (LDRs) apply to generators of more than 100 kg of hazardous waste each month, i.e. Small Quantity Generators and Large Quantity Generators. Kansas' most recent adoption of this regulation changed the generation limit to 25 kg per month, thus requiring that Kansas Small Quantity Generators (KSQGs) also comply with all of the LDR regulations. The intent was that KSQGs only needed to comply with two sections of the LDRs:

- 40 CFR 268.7(a)(5). This provision requires generators that choose to treat certain wastes on-site to "develop and follow a waste analysis plan which describes the procedures they

will carry out to comply with the treatment standards” KDHE is not aware of any KSQGs who do this type of on-site treatment; and

- 40 CFR 268.7(a)(10). This provision contains certification and notification requirements for generators operating under tolling agreements. The use of tolling agreements has dropped over the years so there are currently few or no facilities using this arrangement.

It is important that this error be corrected before Kansas’ authorization to administer the hazardous waste program is updated. If EPA authorizes the regulation without the correction, EPA could require KSQGs to comply with all of the LDR requirements in 40 CFR 268.

As proposed, the amendment at KAR 28-31-268(c)(2) will modify the adoption of 40 CFR 268.1(e)(1) to read as follows:

- (e) The following hazardous wastes are not subject to any provision of part 268:*
- (1) Waste generated by conditionally exempt small quantity generators or Kansas small quantity generators (KSQGs), except KSQGs shall comply with 40 CFR 268.7(a)(5) and (10).*

In addition, KAR 28-31-268(a) will be modified to no longer include appendix IX of 40 CFR 268 in the adoption by reference since this appendix only contains a note. KAR 28-31-268(b)(1) will be modified to exclude all comments and notes from adoption.

#### **b. Environmental benefit.**

The adoption by reference of technical documents in KAR 28-31-260b and the corrections to KAR 28-31-268 do not provide any environmental benefit.

**2) When applicable, a summary of the research or data indicating the level of risk to the public health or the environment being removed or controlled by the proposed regulations or amendments.**

Not applicable.

**3) If specific contaminants are to be controlled by the proposed regulation or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.**

Not applicable.

### **Economic Impact Statement**

#### **1) Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?**

KAR 28-31-260b. General provisions and definitions: adoption of technical documents.

Yes, adoption of these technical documents is needed to maintain and update Kansas' authorization to administer the hazardous waste management program in lieu of EPA.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

No, these amendments are being made to fix an error in the regulation and to exclude all comments and notes from adoption.

#### **2) Do the proposed regulations or amendments exceed the requirements of applicable federal law?**

KAR 28-31-260b. General provisions and definitions: adoption of technical documents.

No.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

The proposed amendment is less stringent than the existing Kansas regulation, but remains more stringent than federal requirements.

#### **3) Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:**

##### **a. Capital and annual costs of compliance with the proposed regulations or amendments and the persons who will bear those costs.**

KAR 28-31-260b. General provisions and definitions: adoption of technical documents.

Adoption by reference of the technical documents imposes no additional costs on the regulated community.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

There are currently 633 KSQG facilities in Kansas that this amendment applies to. The proposed amendment reduces the potential regulatory burden and cost of compliance with this regulation. In practice, KDHE has not been making KSQGs comply with the full set of requirements in 40 CFR 268. The amendments concerning comments and notes will impose no costs.

##### **b. Initial and annual costs of implementing and enforcing the proposed regulations or amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.**

There will be no initial or annual costs to implement or enforce these regulations.

**c. Costs which would likely accrue if the proposed regulations or amendments are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**

KAR 28-31-260b. General provisions and definitions: adoption of technical documents.

If this proposed regulation is not adopted, Kansas cannot be authorized to administer the hazardous waste management program in lieu of EPA.

KAR 28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

If we do not make the correction to this regulation, the 633 Kansas Small Quantity Generators would technically have to comply with all of the LDR regulations, increasing their operating costs. In addition, if EPA authorizes the regulation without the correction EPA could require KSQGs to comply with all of the LDR requirements in 40 CFR 268.

In practice, KDHE has not been making KSQGs comply with the analytical testing and paperwork requirements in KAR 28-31-268. Potential costs that would be incurred if the amendment is not adopted are too facility-specific to estimate.

**d. A detailed statement of the data and methodology used in estimating the costs used in the statement.** Not applicable.

**e. Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.** There were no less intrusive or less costly methods available for consideration by KDHE to achieve the purposes of the proposed amendment.

**f. Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.** Municipalities, counties, and school boards will not incur any costs as a result of the regulatory changes, however a copy of this Regulatory Impact Statement will be sent to each of these organizations at the start of the public comment period.

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